

Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

NANCY L. JAMES, Chapter 7 Trustee

NO. 2:15-cv-01914 RSL

Plaintiff(s),

v.

JAMES C. PATON, et al.,

Defendant(s).

DECLARATION OF MARY C. EKLUND  
IN SUPPORT OF CLARK NUBER'S  
SURREPLY TO PLAINTIFF'S REPLY TO  
CLARK NUBER'S OPPOSITION TO  
PLAINTIFF'S MOTION TO COMPEL  
DISCOVERY FROM CLARK NUBER &  
THE PATON DEFENDANTS

NOTED ON MOTION CALENDAR:  
August 5, 2016

Mary C. Eklund, under penalty of perjury under the laws of the State of Washington,  
hereby declares and states as follows:

1. I am over the age of 21, am one of the attorneys of record for defendant Clark  
Nuber, P.S. ("Clark Nuber") and as such am qualified to make this declaration.

2. Attached as Exhibit A are true and correct copies of emails from Clark Nuber's  
counsel to plaintiff's counsel on April 6 and 7, 2016,<sup>1</sup> specifically, Exhibit A-1 (email from William  
Fitzharris to Manish Borde, dated April 6, 2016), Exhibit A-2 (email from Manish Borde to  
William Fitzharris, dated April 6, 2016) and Exhibit A-3 (email from William Fitzharris to Manish

<sup>1</sup> For security reasons, the specific user access information has been redacted from the exhibit copies but  
it was fully visible to plaintiff's counsel and expert witnesses in the original emails.

1 Borde, dated April 7, 2016). Plaintiff's claim is false that the April 6, 2016 email offering remote  
 2 access to the electronic workpapers "would only be available for a week." Dkt #232 at 2. There  
 3 is no time period for access or availability stated in any of the emails from Clark Nuber's  
 4 counsel.

5 3. Attached as Exhibit B are true and correct copies of additional transcript pages  
 6 from the deposition of Victoria Kitts, taken on June 28, 2016, reflecting just one of several  
 7 conversations between plaintiff's counsel and defense counsel during the deposition of this and  
 8 other Clark Nuber witnesses in which defense counsel repeatedly identified the "availability" and  
 9 location of Clark Nuber's audit workpapers, including electronic copies, if plaintiff's counsel  
 10 wished to print them for use in the depositions. Plaintiff's claim is false that "these materials"  
 11 were not "offered to solve the problems witnesses" were having trying to answer questions by  
 12 plaintiff's counsel. Also, Ms. Kitts was deposed by plaintiff's counsel alone for over 7 hours on  
 13 June 28 2016, and she was deposed again by the Paton defense counsel on July 12, 2016, for  
 14 another 5 hours or so, at the end of which plaintiff's counsel declined to ask further questions.

15 4. Attached as Exhibit C-1 is a true and correct copy of the Amended Notice for  
 16 30(b)(6) Deposition of Clark Nuber, P.S., served July 20, 2016. Attached as Exhibit C-2 is a  
 17 true and correct copy of the entire transcript of the *second* Rule 30(b)(6) deposition of Clark  
 18 Nuber shareholder, Matt Medlin, taken at the unilateral demand of plaintiff's counsel on July 21,  
 19 2016, in Salt Lake City, Utah, while Mr. Medlin was on a business trip.<sup>2</sup> In that deposition, Mr.  
 20 Medlin was asked and did identify by Bates numbers each and every audit workpaper in the  
 21 Clark Nuber electronic files, which files had first been produced in hard copy with Bates  
 22 numbers on all pages to plaintiff's counsel in March 2015 and which plaintiff's counsel was free  
 23

24 <sup>2</sup> Mr. Medlin had already appeared for a full 7 hour day for his first Rule 30(b)(6) deposition by plaintiff on  
 25 June 1, 2016. Mr. Medlin was then forced to stop his own business commitments on July 21, *while out of town*, because plaintiff refused to schedule Mr. Medlin's second deposition at a mutually convenient time for the witness or his counsel, despite repeated requests by defense counsel.

1 to print again, directly from the Clark Nuber electronic files, at any time from April 7 through  
 2 June 30, 2016 – the *3 month period* in which they and their expert witnesses were given free  
 3 24/7 access to those electronic workpapers. See Dkt #224 (Henley Declaration, dated August  
 4 1, 2016, ¶ 4). Plaintiff again seriously misleads this Court in claiming there is “no means of  
 5 identifying” the audit workpapers to print for the Lee or any other Clark Nuber deposition or even  
 6 what are “the essential and relevant workpapers for reference [for their] deposition questions”  
 7 since each audit workpaper has a title on it, (as described by Mr. Medlin in his deposition – see  
 8 Exhibit C-2) and, if plaintiff’s counsel are unable to understand the plain English titles used, they  
 9 could certainly have asked one of their several CPA expert witnesses at the Brueggeman  
 10 Johnson accounting firm, to assist them. Exhibits A-2 and A-3 to this declaration show this  
 11 public accounting firm as well as plaintiff’s counsel were given free access to the Clark Nuber  
 12 electronic records on April 7, 2016, and, as such, either firm could have printed free of charge  
 13 every single page of those electronic records on a daily basis, 24/7, over the next three months.  
 14 See Dkt #224 (Henley Dec, ¶ 4).

15  
 16 DATED this 5th day of August, 2016.

17 PREG O'DONNELL & GILLETT PLLC

18  
 19 By /s/ Mary C. Eklund

20 Mary C. Eklund, WSBA #12416  
 21 Attorneys for Defendant Clark Nuber, P.S.  
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 23 Seattle, Washington 98164  
 24 meklund@pregodonnell.com  
 25

DECLARATION OF SERVICE

I hereby declare that on this day I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the attorneys of record listed below:

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Chapter 7 Trustee:**

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DATED at Seattle, Washington, this 5th day of August, 2016.

/s/ Lisa Jager

Lisa Jager, Legal Assistant